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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

MALTA

1. The Committee considered the initial report of Malta (CCPR/C/68/Add.4) at its 1283rd and 1287th meetings, held on 1 and 3 November 1993, and adopted[1] the following comments:

A. Introduction

2. The Committee welcomes the State party's initial report and the constructive manner in which the dialogue with the Committee has been engaged. It notes that the information submitted in the report and that provided orally by the delegation, both in its introductory statement and in the comprehensive and detailed replies to oral questions, enabled the Committee to obtain a clear picture of Malta's actual compliance with the obligations undertaken under the International Covenant on Civil and Political Rights. The Committee, however, regrets that the report deals mainly with constitutional provisions and contains little information about the practical application of the provisions of the Covenant.

B. Factors and difficulties affecting the application of the Covenant

3. The Committee notes that there are no indications in the report or in the oral submission on the factors or difficulties which may impede the effective implementation of the Covenant's provisions.

[1]At its 1289th meeting, held on 4 November 1993

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C. Positive aspects

4. The Committee notes the efforts undertaken by the Government of Malta in order to guarantee effectively the protection of civil and political rights. Chapter IV of the national Constitution provides an appropriate basis for the effective protection of most of the human rights contained in the Covenant.

5. The recent adoption by Parliament of a number of legal measures, such as the Local Council Act, the proposed review of the Civil Code in order better to ensure the equality of children born out of wedlock and to promote the equality of sexes, the proposed revision of the Investigation of Injustices Act, the forthcoming consideration by Parliament of a draft Data Protection Act and Information Practices Act, indicate the commitment of the Maltese Government to bring its national legislation into line with the Covenant.

6. The Committee notes with satisfaction that, in 1990, Malta acceded to the first Optional Protocol at the same time as it acceded to the Covenant.

D. Principal subjects of concern

7. The Committee is concerned at the fact that the Covenant, unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, has not yet been incorporated into the national legal order. The Committee also expresses concern over the status of the Covenant within the Maltese legal system and the lack of clarity concerning the resolution of eventual conflicts between the Covenant and domestic legislation.

8. In this connection, the Committee recalls that, in accordance with article 2, paragraph 2, of the Covenant, each State party to the Covenant undertakes to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant.

9. The Committee also expresses concern over the apparent preference accorded, in the domestic law as well as in legal doctrine and jurisprudence, to the European Convention for the Protection of Human Rights and Fundamental Freedoms as against the International Covenant on Civil and Political Rights. In that regard, the attention of the State party is drawn to the fact that the latter guarantees a number of human rights not protected under the former and that permisible restrictions are less broad-based.

10. The Committee notes that the reservations entered by Malta upon ratification of the Covenant with respect to a number of provisions have an adverse effect on the effective implementation of the Covenant. No convincing reasons have

been offered for the reservations to articles 13 and 14, paragraph 6. Additionally, given the actual situation of human rights protection in Malta, some reservations may now have become obsolete.

11. The Committee further notes that certain requirements of the Covenant, such as those referred to in articles 9, paragraph 3, and 26, are not fully met. In that connection the attention of the State party is drawn to the pertinent General Comments adopted by the Committee as well as to the Committee's jurisprudence under the Optional Protocol.

E. Suggestions and recommendations

12. The Committee recommends that the State party take appropriate measures to incorporate the substantive provisions of the Covenant into domestic law and ensure that the restrictions imposed under domestic law do not go beyond those permissible under the Covenant.

13. The Committee also recommends that the Government review, with a view to withdrawing, the reservations made upon ratification of the Covenant, particularly those concerning article 13 and 14 of the Covenant.

14. The Committee expresses the hope that the Government of Malta will consider ratifying the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty.

15. The Committee emphasizes that further measures should be taken to ensure that the provisions of the Covenant be made more widely known, particularly among the legal profession, members of the judiciary and administrative authorities. The general public should also be adequately informed of the provisions of the Covenant and those contained in the Optional Protocol.